IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEALS NO. 13, 35 AND 36 OF 2003.

CRIMINAL APPEAL NO. 13 OF 2003.

Ravi alias Ravi Kumar Patil,
son of Vishwanath Patil,
aged 18 years, labour,
resident of C/o Suresh Gopi
Chanappa,, Vodacodem, Porvorim.
Native of Gayakwad Nagar,
Malwani Malad (W),
Mumbai. ... Appellant.

VERSUS

S t a t e
(Through Mapusa Police Station) ... Respondent.

Shri Irshad Agha, Advcocate for the Appellant.

Shri S.N. Sardessai, Public Prosecutor for the State.

CRIMINAL APPEAL NO. 35 OF 2003.

Shri Suresh Chanappa,
son of Gopi Chanappa,
aged 18 years, Bus Cleaner,
resident of Advo Rasto,
Vodacodem, Porvorim, Bardez,
Goa. Native of Hatikatti,
Gadag, Karnataka. ... Appellant.

VERSUS

State of Goa,
Through Police Inspector,
Mapusa Police Station,
Mapusa, Goa. ... Respondent.

Shri J. Godinho, Advocate for the Appellant.

Shri S.N. Sardessai, Public Prosecutor for the State.

CRIMINAL APPEAL NO. 36 OF 2003.

Smt. Laxmi Singh,
wife of Rajesh Singh,
aged 45 years, service,
resident of Pajir, Uccassaim,
Bardez, Goa.

Native of Kamalakatti,
Gadag, Karnataka. ... Appellant.

VERSUS

State of Goa,
Through Police Inspector,
Mapusa Police Station,
Mapusa, Goa. ... Respondent.

Shri J. Godinho, Advocate for the Appellant.

Shri S.N. Sardessai, Public Prosecutor for the State.

CORAM: A.M. KHANWILKAR &
P.V. HARDAS, JJ.

DATE: 10TH DECEMBER, 2003.

ORAL JUDGMENT: **(PER HARDAS, J.)**

These appeals, filed by the original accused No.3, original accused no.2 and original accused No.1, challenge their conviction and sentence as passed by the IInd Addl. Sessions Judge, Panaji, by Judgment dated 16th September, 2002 in Sessions Case No. 14/2000, convicting the appellants for the offences punishable under Section 302 r/w Section 34 and Section 201 r/w Section 34 of the I.P.C. and sentencing each accused to undergo imprisonment for life and to pay a fine of Rs.5000 and rigorous imprisonment for three years and to pay a fine of Rs.1000/-.

2. The facts in brief as are necessary for the decision of the appeals are set out hereunder :-

On 28.11.99 at about 1.45 p.m. P.S.I. Mulla attached to the Mapusa Police Station informed P.W.33

A.S.I. Govind Bhandari that he had received a telephone message from P.W.1 Fernando D'Souza, Deputy Sarpanch of Village Panchayat of Ussaim, that from the house of original accused No.1 Laxmi, foul smell was coming. P.S.I. Mulla instructed P.W.33 A.S.I. Bhandari to contact P.W.1 Fernando and ascertain the facts. Accordingly P.W.33 A.S.I. Bhandari along with the police staff went to the house of accused No.1 Laxmi. Before going to the house P.W.3 A.S.I. Bhandari had contacted P.W.1 and had ascertained about the foul smell emanating from the house of accused No.1. On reaching the house of accused No.1 they noticed foul smell coming and hence went around the house to locate the exact place from where the foul smell was coming. They noticed a toilet adjacent to the house and also noticed large number of flies. The door of the toilet was closed by putting a stick in the latch. P.W.1 Fernando removed the stick and opened the door of the toilet. Inside the toilet a folded mat was kept. The mat was tied by a string and when the string was untied, and the mat was unfolded, P.W.33 noticed blood stains. The door was again latched. The house of accused No.1 was found to be locked. Through a small hole in the wall they noticed that fresh cow-dung was applied over small area. Behind the toilet they also noticed a spade to which freshly dug soil had adhered. On return to the Police Station, P.W.1

Fernando filed his complaint at Exh.14 before P.W.35 SDPO Allan De Sa. On the basis of the said report, U.D. No.66/99 was registered and P.W.35 SDPO Allan De Sa proceeded to the scene of offence. In the presence of P.W.2 Darshana Karapurkar and Vilas Pednekar the scene of the offence panchanama was recorded. The scene of the offence panchanama is at Exh.29. P.W.35 SDPO Allan De Sa was accompanied by Shri Manohar Joshi (P.W.4) and the Police Surgeon and the photographer. The door of the toilet was opened and the mat was brought out. On opening it, noticed two gunny bags, pillows and some pieces of cloths. The mat, the gunny bags and the pillows were stained with blood. Thereafter the door of the house of the accused No.1 Laxmi was forcibly opened by using an iron rod. On opening the door they found that there were two mats spread on the floor with three pillows on the mats. A white and coloured pant was hanging on the wall and in one of the pockets a copy of the complaint made by one Rajesh Singh, husband of accused No.1 was found. In the main room they noticed an area of 2m x 31 cms contained fresh application of cow-dung and it had developed cracks. The said portion appeared to have been freshly dug and thereafter covered with mud. There was a cot in the said room and behind the cot a bundle was found to contain a gunny bag which had blood stains. Below the gunny bag they noticed a koita and a

broken knife having blood stains wrapped in a paper. In one polythene bag near the cot a copy of another complaint made by Rajesh Singh was also found. The portion over which cow-dung had been recently applied was ordered to be dug. After digging for sometime, they noticed foul smell emanating and on digging deeper, they initially noticed two feet protruding from the earth, wrapped in a blanket and in a gunny bag. On further digging, they excavated a body wrapped in a blanket and gunny bags. On removal of the blanket P.W.2 Darshana identified the body to be that of one Rajesh Singh who used to reside in the house along with accused No.1 Laxmi. Sample mud and blood stained mud and all other articles came to be attached. The body was sent for post mortem mortem examination and P.W.35 SDPO Allan De Sa lodged his complaint at Exh.97 against accused No.1 and her accomplices for an offence punishable under Sections 302 and 201 of I.P.C. Inquest panchanama came to be drawn in the presence of P.W.7 Maruti Nasnodkar and Bapu Naik. The Inquest panchanama is at Exh.41. The dead body was referred for post mortem examination. The post mortem was conducted by P.W.28 Dr. Rodrigues. The letter requesting for post mortem examination is at Exh.81 Colly. P.W.28 Dr. Rodrigues noticed 23 incised wounds on various parts of the body. He opined that death was due to haemorrhage, as a result of cut-throat injuries

and multiple stab injuries. The post mortem report is at Exh.82.

On 30.11.1999 P.W.35 Allan De Sa received a wireless message from P.S.I. Colva police Station that accused No.1 along with the accomplices were traced at Colva in the house of the brother of accused No.1. P.W.35 Allan De Sa proceeded to Colva and brought the accused to Mapusa. Accused No.1 came to be arrested in the presence of P.W.5 Suhasini Naik and the arrest panchanama of the accused is at Exh.36. Accused Nos.2 and 3 came to be arrested in the presence of P.W.6 Devidas Govekar vide arrest panchanama at Exhs.38 and 39. Their clothes also came to be attached. The accused were referred for medical examination vide Exh.21 and were examined by P.W.3 Dr. Silvano Dias Sapeco. P.W.3 Dr. Sapeco noticed that accused no.1 had a superficial healing wound with healing margins at left outer aspect of mid-foot with central hard scab. According to him the injury was caused by friction of hard surface and was about 10 to 15 days duration prior to 30.11.99. The certificate is at Exh.22 Colly. He had also collected sample of scalp hair and taken finger nail clippings and was referred for blood grouping which was determined vide Exh.23 to be B RH Positive. He had also examined Accused No.2 Suresh, who had a hard scab, superficial epidermal lacerated

wound of 1.3 x .4 cms. on the right inner aspect of mid-foot. The finger nail clippings and scalp hair samples were taken and referred to the blood bank for determination of his blood group. His report of examination is at exh.24 Colly. and blood group was determined as B Rh Positive . Accused No.3 Ravi had six injuries which were abrasions on the left outer aspect elbow, abrasion on the left shoulder, linear incised cut on the palmar aspect of right index finger, linear incised cut on right palm, linear incised cut at right middle fingers inner aspect and linear incised cut at right thumb's outer aspect. The report of the examination is at Exh.26 and vide Exh.26 his blood group was determined as A Rh Positive.

On 30.11.99 at the instance of accused No.1, two keys and a lock and a pink saree stained with blood came to be attached vide panchanama at Exh.45 on the basis of the statement of accused no.1 made in the presence of P.W.9 Sukanti Bhise. On 1.12.1999 at the instance of the accused No.2 Suresh a long sleeve shirt came to be attached vide panchanama at Exh.43 on the basis of the statement of accused No.2 made in the presence of P.W.8 Digamber Lingudkar. At the instance of accused No.3 Ravi a pick-axe and a spade came to be attached vide panchanama at Exh.55 on the basis of the statement made in the presence of P.W.13 Jose Noronha.

On 6.12.1999 the weapons of the assault were referred to the Police Surgeon soliciting his opinion in respect of the possibility of the weapons causing the injuries to the deceased vide Exh.86 Colly. Dr. Rodrigues opined that injuries no.10 to 14 and 17 to 21 could be caused by the knife while injuries No.1 to 9, 15, 16, 22 and 23 could be caused by the koita (chopper). Vide letter at Exh.68 the Executive Engineer was requested to draw the sketch of the scene of offence. The sketch was drawn by P.W.23 Allen D'Sa who was working as Technical Assistant in P.W.D. at Mapusa. The sketch is at Exh.69. Information was sought from the Chief Officer of Mapusa Municipal Council regarding the attendance of accused No.1. The muddemal property was forwarded to the Forensic Laboratory, Hyderabad and the report is at Exh.86 Colly. Further to the completion of the investigation a charge-sheet against the appellants came to be filed before the J.M.F.C., Mapusa.

On committal of the case to the Court of Sessions, charge vide Exh.7 was framed against the appellants for an offence punishable under Sections 302, 201 I.P.C. The appellants denied their guilt and claimed to be tried. The prosecution in support of its case examined 35 witnesses.

3. The learned Trial Court on consideration of the evidence of the prosecution, convicted and sentenced the accused as aforestated. The learned Trial Court found that there were 21 circumstances against the accused. The said circumstances are :-

i) Accused No.1 was working as scavenger in Mapusa Municipal Council and her working hours were from 6.30 a.m. to 10.30 a.m. and from 2.00 p.m. to 6.00 p.m.

ii) Accused no.1 and deceased are husband and wife; accused no.2 is brother of accused no.1 and accused No.3 is friend of accused No.2.

iii) Accused no.1 and deceased were residing in the house at Pajir, Punolem, Ucassaim.

iv) There used to be quarrels between the accused no.1 and the deceased and deceased was afraid of being killed by accused no.1.

v) In first week of November, 1999, the accused no.1 had tried to engage contract killers to kill the deceased.

vi) On 24.11.99 at night time, the accused no.2

and the deceased had been to the liquor bar of PW15 and had consumed liquor and accused no.2 had forced the deceased to take more liquor, but on 25.11.99, the accused no.2 came alone at the same bar at 9.00 p.m. and told Pw15 that the deceased had gone on 5 days business tour to Bombay.

vii) On 24.11.99 at about 10.00 p.m., Pw30 heard groaning sound of the deceased in the house of accused no.1 then saw that deceased was put upside down on the floor and there were blood drops near his face and accused nos. 2 and 3 were pressing his neck, whereas accused no.1 was sitting in that room.

viii) Accused no.1 and 2 had gone to the house of milk vendor, Pw17 at 6.00 p.m. and had taken from her a basket full of cowdung.

ix) Accused No.1 attended her duties from 23.11.99 to 25.11.99 but was absent from 26.11.99 to 29.11.99.

x) On 25.11.99, accused No.1 told Pw12 that she along with two others killed her husband and to arrange vehicle to take away the dead body and he then saw the dead body of Rajesh Singh put in a gunny bag kept below the cot and accused no.3 was digging a pit, in the

house of accused no.1.

xi) On 28.11.99, foul smell was coming from the toilet and house of accused no.1 but the house was locked.

xii) Upon report lodged by Pw1, the police came to the house of accused no.1 and drew scene of offence panchanama Exh.29. In the toilet, a bundle of mat whose both ends were tied was found in which there were gunny bags and clothes soiled and having blood stains.

xiii) The house was opened by inserting metallic rod in the hook of the lock of the main door and detaching the same.

xiv) A patch of freshly prepared ground having cowdung spread on it was found and after digging the same, the dead body of the deceased was discovered.

xv) Blood stained chopper and knife (Mos.11 and 12) were found in the house.

xvi) Post-mortem examination, 23 stab injuries found on deceased caused by Mos. 11 and 12.

xvii) Accused persons absconding and traced on

30.11.99 in the house of Laxman, the brother of accused No.1, at Colva.

xviii) Injuries found by the doctor on the bodies of all the three accused, not explained by accused persons.

xix) Recovery of blood stained clothes of accused nos. 2 and 3 and of water from the bucket wherein clothes were soaked, at the instance of accused no.2.

xx) Recovery of blood stained saree of accused no.1 and the key of the lock which was on the main door of the house, recovered at the instance of the accused no.1.

xxi) Recovery of pick-axe and spade at the instance of accused no.3. Spade having same mud as was found in the ground under which deceased was buried and on the gunny bag.

4. The learned Trial Court found, on consideration of the evidence that the prosecution had proved the circumstances and therefore convicted and sentenced the accused as aforestated.

5. In respect of the first circumstance P.W.14 John Colaco, an employee of the Mapusa Municipality has stated that the accused no.1 was working in the Mapusa Municipality. P.W.18 Shripad Nagvekar has also stated that accused no.1 was a sweeper working for the Municipality. P.W.25 Gajanan Salkar, the Chief Officer of Mapusa Municipal Council, had issued a certificate at Exh.74 which says that the accused no.1 was working as a scavenger in the Mapusa Municipal Council. In fact, these facts have been admitted by the accused no.1 in her statement under Section 313 Cr.P.C. By virtue of the letter at Exh.99 Colly. the timing of accused no.1 was from 6.30 a.m. to 10.30 a.m. and from 2.00 p.m. to 6.00 p.m. The learned Trial Court, since there was no challenge to the testimony of the above witnesses, held that the prosecution had proved the first circumstance.

6. In respect of circumstances No.(ii) and (iii), the learned Trial Court had found that the deceased Rajesh Singh was residing with accused No.1 and that accused No.2 is the brother of the accused No.1. The accused, according to the learned Trial Court, have admitted these facts in their statements under Section 313 Cr.P.C. P.W.11 Prabhakar Salvi has stated that accused No.2 is the brother of accused No.1 and accused No.3 is a friend of accused No.2. P.W.30 Daya Govekar

has stated that accused no.2 is the brother of accused no.1 and that accused No.2 and 3 used to come to the house of accused No.1. Thus the learned Trial Court held that circumstances (ii) and (iii) had been proved by the prosecution.

7. In respect of the fourth circumstance, prosecution has examined P.W.10 Rajendra Naik who is a practising Advocate and Trade Union leader representing All India Trade Union Congress and Organisation. He states that he had come in contact with deceased Rajesh Singh in the year 1997 as he had gone at the site where the huts were being demolished. In the year 1998 he had formed a Society on behalf of the hutment dwellers and deceased Rajesh Singh was one of the office bearers. Thus deceased Rajesh Singh used to frequently visit his office. In August, 1999 deceased Rajesh Singh had come to his office and had complained regarding the behaviour of his wife. P.W.10 Advocate Naik had asked Rajesh Singh to come along with his wife. However, on the next occasion, only accused No.1 Laxmi had come to his office P.W.10 Advocate Naik asked Laxmi to come with deceased Rajesh Singh so that he could discuss and settle their problems amicably. Thereafter, both, the accused No.1 and Rajesh Singh had come to the office of P.W.10 Advocate Naik. Accused no.1 had complained that Rajesh Singh was consuming

alcohol while Rajesh Singh informed him that accused no.1 Laxmi was having an affair with some strange person and therefore he gets tense. Rajesh Singh further told him that in July, 1999 accused No.1 Laxmi, her children and his mother-in-law had taken Rajesh Singh to a place in Margao where accused no.1 Laxmi's brother was residing. On that day accused No.1 Laxmi and her brother had given him liquor after putting some poison in it. Rajesh Singh also informed Advocate Naik that after consuming liquor he started vomiting and getting loose motions. Accused No.1 Laxmi was forcing him to take more drinks and because of the obnoxious smell, on the pretext of going out, he threw the drink outside. Rajesh Singh further complained that accused No.1 Laxmi had sold two gold chains and given the money to Laxman her brother. Accused No.1 denied that she had administered poison to Rajesh Singh. However, admitted to have sold the two gold chains. P.W.10 Advocate Naik advised both of them to behave properly. In November, 1999 deceased Rajesh Singh came to his office and told him that Rajesh Singh had transferred his house in his own name because he could not trust his wife. Rajesh Singh had further stated that his wife Laxmi had brought a strange person by name "Suresh Patil" (it should read as Ravi Patil) along with her brother from Margao and all were staying in the house. On 24.11.1999 Rajesh Singh again came to the office of

P.W.10 Advocate Naik and had told him that Laxmi's daughter had delivered a child and he had to keep her at his friend's place. In cross-examination he had admitted not to have disclosed in his statement that Laxmi had admitted to have sold the gold chains. Apart from this, nothing has been brought out in the cross-examination to believe the version of P.W.10 Rajendra Naik.

8. P.W.11 Prabhakar Salvi has stated that the daughter of accused No.1 Laxmi by name Bucha had stayed in his house after she had delivered a baby girl. She had stayed because of the request made by Rajesh Singh. He further states that the accused had come to his house and had stayed overnight and while leaving the house, accused No.1 had forgotten the key of her house. He has further stated that there used to be frequent quarrels between the accused No.1 and deceased Rajesh Singh on account of the house and on account of pregnancy of Bucha.

9. P.W.22 Christopher Fonseca states that Rajesh Singh used to come to the office to meet P.W.10 Advocate Naik. He further states that in September, 1999 Rajesh Singh had come accompanied by accused No.2 and had informed him that his wife wants to poison him and that accused No.2 had confessed to him that accused

No.1 Laxmi had previously tried to poison Rajesh Singh at Margao in the house of her brother. Rajesh Singh had further informed him that accused No.1 Laxmi was notorious and had previously killed her previous husband by burning. Again nothing worthwhile has been brought out in the cross-examination of this witness to believe him.

P.W.12 Vishnu Harijan states that he along with wife Meena were residing in the house of accused No.1. He states that there used to be quarrels between accused No.1 and her husband. Sometime in September, 1999, while he was staying in her house, accused no.1 had asked him to arrange for a person to kill her husband and that she would pay Rs.1 lakh.

The learned trial Court on consideration of the above evidence had come to the conclusion that the prosecution had established circumstance no.(iv).

10. In respect of circumstance no.(v) P.W.12 Vishnu Harijan had stated that the accused No.1 had asked him to arrange for a contract killer to kill deceased Rajesh Singh and for which she was willing to pay Rs.1 lakh. P.W.12 Vishnu Harijan then states that he personally did not want to execute the killing and told Accused no.1 that he would search for such a person.

He brought P.W.20 Uday to the house of accused No.1 and P.W.20 asked to pay Rs.25,000 in advance and if that amount was paid, he would kill the deceased Rajesh Singh. Accused No.1 told that she would pay the entire money after execution of the work. P.W.20 therefore refused to do the work. Meanwhile P.W.12 Vishnu Harijan had shifted his residence to Mapusa. On 25.11.1999 accused no.1 had come to his house and had told him that she along with two others had killed her husband and he should arrange a vehicle to take away the dead body. P.W.12 therefore went to the house of accused no.1 on his scooter and saw that the dead body of deceased Rajesh Singh was put in a sack and was kept below the cot. He also saw accused No.3 Ravi digging a pit inside the house of accused no.1. He told accused No.3 not to dig a pit. Accused No.1 gave him Rs.300/- and told him to bring a vehicle. P.W.12 Vishnu told accused No.1 that Rs.300/- would be insufficient to arrange a vehicle. He however told accused no.1 to come at 2.00 p.m. near the Municipal toilet at Mapusa and she should pay a further amount of Rs.1000/- to him. In the afternoon accused No.1 met him near the toilet and paid him Rs.1000/-. P.W.12 Vishnu promised her that he would arrange the vehicle in the evening. He however did not send the vehicle but spent the money on himself. At night all the three accused came to his house and demanded the money back. He informed accused

No.1 that he had spent the money. Thereupon accused No.1 started abusing him.

11. P.W.20 Uday states that in November, 1999 P.W.12 Vishnu had met him and told him that a person was to be killed and that the "reward" would be Rs.25,000/-. This was disclosed by P.W.12 Vishnu in the presence of P.W.19 Soter. On the same day P.W.12 Vishnu took P.W.20 to the house of accused no.1. P.W.12 Vishnu told accused No.1 that if she wanted her husband to be killed she should pay Rs.25,000/- in advance. However, accused No.1 told them that they should first kill her husband and then she would pay. Accused No.1 had called them after 2/3 days in the Municipal market near the public toilet. P.W.20 Uday had again told them that they should first kill the husband and then she would pay. P.W.19 Soter also states that he had accompanied P.W.12 Vishnu and P.W.20 Uday to the house of accused no.1. P.W.12 Vishnu had asked accused no.1 to pay Rs.25,000/- in advance which she refused. Thereafter accused no.1 had again stated near the toilet in the Municipal market that the should first kill her husband then she would pay.

12. The evidence of P.W.12 Vishnu Harijan that he had gone to the house of accused No.1 and seen the dead body of Rajesh Singh wrapped in gunny bags and seen

accused No.3 digging a pit and his evidence that he had arranged for P.W.20 and P.W.19 to work as contract killers to eliminate Rajesh Singh is corroborated by the evidence of P.W.19 and P.W.20 Uday. There is nothing in the cross-examination of these witnesses to discredit what they have stated. In the background of this evidence therefore, the learned Trial Court held that circumstance no.(v) was proved by the prosecution.

13. In respect of circumstance No.(vi) prosecution has examined P.W.15 Gabriel Fernandes who is the owner of a liquor bar. He stated that on 24.11.1999 deceased Rajesh Singh accompanied by accused no.2 Suresh had come to his Bar and both of them had consumed liquor. Rajesh Singh had consumed more as accused No.2 had forced him to drink. P.W.15 further states that on 25.11.1999 accused No.2 had alone come at about 9.00 p.m. for purchase of liquor and when asked by P.W.15 as to where RAjesh was, the accused No.2 replied that Rajesh had gone on five days business tour to Bombay. Similar is the evidence of P.W.16 Indu who though refers to the date as 24th October, in reality is referring to an incident of 24th November wherein deceased Rajesh and accused no.2 were told by her not to drink too much liquor. Rajesh had come to her house and asked for a bidi and thereafter accused No.1 and accused no.2 had come and taken Rajesh Singh. P.W.16

Indu states that thereafter she had not seen Rajesh alive. There is nothing in the cross-examination either of P.W.15 or P.W.16 to discredit what they have stated. The learned trial Court, on consideration of the evidence held that the prosecution had proved circumstance no.(vi).

As to circumstance no.(vii) the pivot of the prosecution case is the evidence of P.W.30 Daya Govekar. P.W.30 Daya states that she knows all the three accused. She further states that the house of accused No.1 is just one metre behind her house. Accused No.1 has three children who are aged 5 yrs., 4 yrs. and 1-1/2 yrs. respectively. Accused No.2 Suresh is the brother of the accused no.1. Accused No.2 and 3 used to come to the house of accused No.1 and there she got acquainted with them. She further states that on 24.11.99 at about 10 p.m., after having her dinner, she was going to the house of her Aunt P.W.16 Indu. She states that in order to go to the house of Indu, she has to pass by the side of the house of accused No.1. When she was passing by the side of the house of accused No.1 she heard some groaning sound of Rajesh. Therefore she went near the door of the house. The front door of the house of accused No.1 was open and there was a tube light burning in the front portion of the house. She saw that Rajesh was put

upside down on the floor with his face downwards and accused No.2 and 3 were pressing his neck. Rajesh was kept on a mat and there were blood stains on one side of Rajesh. Accused No.1 was present in that room. Rajesh was covered with a bedsheet. She questioned accused No.1 as to what had happened to Rajesh. Accused No.1 had replied that nothing had happened and she had again asked accused No.1 as to what had happened, but accused no.2 and 3 shouted at her and told her to go away. Thereafter she went to the house of Indu and on the next day i.e. on 25.11.99 went to the house of her sister and came back on 26.11.99. She states that she did not speak about the incident to any one because she was afraid of accused Nos.2 and 3. She however states that about 4 or 5 days after the incident she had spoken about the incident to one of the her neighbours who had informed the Police that she had seen the incident. In the cross-examination she states that she has been seeing accused No.2 and 3 since about 5 to 6 months prior to 4.12.99. She has further stated that on 24.11.99 P.W.16 Indu was alone and hence she had gone to her house. She has further stated that after she had gone to the house of Indu, she informed Indu what was going on in the house of accused No.1. She has admitted to have stated in her statement that she did not speak about the incident to anybody out of fear of accused No.2 and accused No.3.

She has admitted to have informed her neighbour Sandhya Bicholkar about the incident after about 4 to 5 days. In the cross-examination on behalf of accused No.2 and 3 she has admitted that it was Sandhya Bicholkar who informed the Police that P.W.30 Daya had seen the incident. She has admitted that the Police had come to the house of accused No.1 on 25.11.99 to remove the dead body. She has also admitted that after about four days of the incident she had seen flies in the house of accused No.1 and foul smell was emanating from the house.

14. The evidence of this witness is attacked on the ground that P.W.30 Daya had not disclosed to anyone that she had seen the incident. According to her she had disclosed the incident to Sandhya Bicholkar, who has not been examined as a witness. P.W.30 Daya states that she had disclosed the incident to Indu, but P.W.16 Indu does not corroborate Daya. Lastly it is urged that it is highly improbable that the accused would commit the murder of deceased Rajesh Singh while leaving the door open.

15. The statement of P.W.30 Daya that she had informed P.W.16 Indu regarding the incident has been brought out as an omission. Therefore not much importance can be attached to the fact that P.W.30 Daya

had disclosed the incident to Indu and P.W.16 Indu does not corroborate the said disclosure. Even if it is held that P.W.30 Daya is not telling the whole truth regarding the disclosure to Indu, still on that ground alone her evidence cannot be jettisoned. The doctrine of falsus in uno and falsus in omnibus is not applicable. Non-examination of Sandhya Bicholkar to whom P.W.30 Daya had disclosed the incident does not affect the credibility of P.W.30 Daya. In fact, it has been brought out in the cross-examination that it was Sandhya Bicholkar who told the police that P.W.30 Daya had seen the incident. There is no further cross-examination on this aspect and therefore according to us, adverse inference against either the prosecution or an inference that this witness is stating a falsehood cannot be drawn on the basis of non-examination of Sandhya Bicholkar. There is nothing unnatural in the conduct of this witness in not disclosing this incident to anyone for a period of four days as she had stated that she was afraid of accused no.2 and 3. Apart from it, nothing substantial has been brought out in the cross-examination to doubt the veracity of this witness. If at the close of the cross-examination a witness emerges as a truthful witness, the evidence of the witness cannot be discarded on either fanciful grounds or on conjectures. There is nothing improbable in the evidence of P.W.30

Daya, so as to affect her veracity. We also do not find anything improbable that the accused had left the door open while committing the murder of deceased Rajesh Singh. Accused No.1 Laxmi was openly soliciting information regarding the contract killers to kill her husband Rajesh Singh . In these circumstances P.W.30 Daya cannot be disbelieved on the ground that it is improbable that the accused would keep the door open while committing the murder of Rajesh Singh. As to why the accused had left the door open, is a question which is easy to ask, but difficult to answer as the answer to the question is locked in the minds of the accused and the situation prevailing at the time of commission of the offence. According to us therefore P.W.30 Daya is a truthful witness and her evidence can be accepted and has been rightly accepted by the learned trial Court. No plausible explanation is offered as to why P.W.30 Daya, a neighbour of accused No.1 Laxmi, would depose against her. The plea in the statement under Section 313 that due to the earlier quarrel P.W.30 is deposing against the accused, was not put to P.W.30 Daya in her cross-examination and a plea of previous enmity therefore has to be rejected as an afterthought.

16. As to circumstance no.(viii), in support of this circumstance, the prosecution has examined P.W.17 Suman Naik, a milk vendor. She states that accused

No.1 had come to her house and had taken away fresh cowdung in a basket. Accused No.1 was accompanied by a boy who was her brother. After about 2 or 3 days she learnt that the husband of accused No.1 was buried in her house and the police had come and taken his body out. This witness is not cross-examined by the accused and therefore this circumstance is also proved against the accused.

17. As to circumstance no.(ix), on the basis of the certificate at Exh.99 Colly. it is established that the accused No.1 was absent from her duties from 26.11.99 to 29.11.99.

18. As to circumstance no.(x), this circumstance is amply proved by the evidence of P.W.12 Vishnu Harijan whose evidence has been adverted to in detail by us in the earlier paragraphs. The fact regarding the payment of money made to P.W.12 by the accused is sought to be corroborated by the prosecution in the examination of P.W.18 Shripad Nagvekar, a jeweller. P.W.18 Shripad states that on 25.11.99 at about 9.50 a.m. accused No.1 had come to his shop and had sold a pair of earrings and that P.W.18 Shripad had paid Rs.1150/- to accused No.1.

19. As to circumstances No.(xi), (xii), (xiii),

(xiv) and (xv), these circumstances are proved by the prosecution through the evidence of P.W.1 Fernando, P.W.2 Darshana Karapurkar panch witness to the scene of offence panchanama, P.W.29 Narayan Narvenkar, P.W.27 Hanumant Kanekar and P.W.35 S.D.P.O. Allen D'Sa. During the course of the hearing of the appeals, these circumstances have not been seriously challenged by the accused. The learned Trial Court taking into consideration the evidence of the above witnesses, has held that the prosecution has proved these circumstances.

20. As to circumstance No.(xvi), the post mortem was conducted on the dead body of deceased Rajesh Singh by P.W.28 Dr. Edward Rodrigues. The post mortem report is at Exh.82. As per the evidence of P.W.28 Dr. Rodrigues, he noticed the following external injuries:-

1. Incised wound of 10 cms x 6 cms x bone deep, horizontal with chipping of 5th cervical vertebral body, over front of neck, at mid thyroid cartillage level with 2 inches on right side of neck, which had cut the thyroid cartilage in its middle and also carotid arteries on both sides with effusion of blood and staining in subcutaneous tissues and muscles, with margins clean cut and both angles acutely cut.

2. Incised wound of 10 cms x 1 cm x bone deep, oblique with chipping of left mastoid bone behind left ear and cut in left mid ear.

3. Incised wound of 8 cms x 1 cm x bone deep, oblique with chipping of left mandibular bone underneath and cut in left ear lobule in lower third part of ear.

4. Incised wound of 8 cms x 0.5 cms x bone deep, oblique with chipping of left malar bone underneath, over malar region of face.

5. Incised wound of 5 cms. x 0.5 cms x bone deep, oblique with chipping of left Maxilla underneath.

6. Incised wound of 4 cms x 0.5 cms x bone deep, oblique with chipping of left mid mandibular border, underneath.

7. Incised wound of 8 cms x 2 cms x bone deep, oblique with chipping of left supra scapular border over back of left shoulder.

8. Incised wound of 5 cms x 2 cms x bone deep, horizontal with chipping of medial border of left clavicle underneath, over upper medial front of chest.

9. Incised wound of 5 cms x 0.5 cm. x 0.5 cms on left side upper front of chest 7 cms from midline in left second ICS.

10. Incised wound of 3 cms x 1 cm x 1 cm. on right side middle chest, oblique, 11 cms medial to right nipple outer angle acutely cut, inner angle less acutely cut, 135 cms above right heel.

11. Incised wound 3 cms x 1 cm x Abdominal cavity deep over right side upper abdomen, 125 cms. above right heel, 10 cms below injury no.10 with intestines protruding out of the wound, directed upwards, backwards and outwards, outer angle acutely cut and inner angle less acutely cut.

12. Incised wound of 3 cms x 1 cm x 0.5 cm. on right side middle abdomen, 112 cms above right heel in mid clavicular line, horizontal.

13. Incised wound 3 cms x 1 cm. x Chest cavity deep on right side middle chest in mid axillary line, 16 cms below right armpit, 120 cms. above right heel with cut in right lung of 1.5 cms. depth. Directed upwards, forwards and medially.

14. Incised wound 3 cms x 1 cm x 0.5 cm on

right side upper abdomen, 15 cms below injury no.13 110 cms above right heel.

15. Incised wound of 7 cms x 0.5 cms over dorsum of left foot within chipping of metatarsal bone of left big toe.

16. Incised wound of 5 cms x 1.5 cms x bone deep with chipping of proximal phalanx of left big toe.

17. Incised wound of 3 cms x 2.5 cms x Abdominal cavity deep with intestines protruding out of wound on left side upper abdomen, 3 cms from midline, 120 cms above left heel, inner angle acutely cut and outer angle less acutely cut, horizontal.

18. Incised wound of 2.5 cms x 1.5 cms x abdominal cavity deep with intestines protruding out of wound, 1 cm below injury no.17, 119 cms above left heel.

19. Incised wound of 3 cms x 1.5 cms x abdominal cavity deep with intestines protruding out in left anterior anxillary line, 121 cms above left heel, inner angle acutely cut and outer angle less acutely cut, directed upwards, forwards and medially.

20. Incised wound of 3 cms. x 1.5 cms in mid axillar line on left side abdomen x abdominal cavity deep with intestines protruding out, 120 cms above left heel, inner angle acutely cut and outer angle less acutely cut, directed upwards, forwards and medially.

21. Incised wound of 3 cms x 1 cm x abdominal cavity deep, 1.5 cm behind injury no.20 with intestines protruding out, 120 cms above left heel on left side abdomen.

22. Horizontal incised wound of 6 cms x 0.5 cms x bone deep over left side upper frontal scalp region with chipping of outer table of frontal bone.

23. Horizontal incised wound of 5 cms x 0.5 cms x bone deep over left side forehead 2 cms below injury no.22, with chipping of outer table of frontal bone.

21. As per P.W.28 Dr. Rodrigues the deceased Rajesh Singh died due to haemorrhage and shock as a result of cut throat injuries and multiple stab injuries to chest and abdomen. P.W.28 Dr. Rodrigues has also opined that the injuries can be caused by chopper (M.O.11) and knife (M.O.12). Thus on the basis of the evidence of P.W.28 Dr. Rodrigues, this

circumstance is also proved.

22. As to circumstance No.(xvii), the accused were arrested from the house of the brother of accused No.1 at Colva in pursuance to a wireless message received by P.W.35 Allen D'Sa. However, the prosecution has not been able to establish that the accused were absconding. Accused No.1 has stated that she had gone to visit her brother at Colva as he was indisposed. Therefore, according to us, mere fact that the accused were arrested at the residence of the brother of accused No.1, it cannot be inferred that the accused were absconding.

23. As to circumstance No.(xviii), the accused were examined by P.W.3 Dr. Silvano Sapeco who has noted the injuries on the person of the accused. The accused No.2 and 3 have not offered any explanation as to how these injuries were caused. From the evidence of P.W.3 Dr. Sapeco, it is clear that the injuries to accused No.2 and 3 were caused on 24th or 25th November, 1999. Therefore the learned Trial Court has accepted the circumstance as proved as against the accused Nos.2 and 3.

24. As to circumstance no.(xix) this circumstance relates to the recovery of blood stained clothes of

accused Nos.2 and 3 at the instance of accused No.1. Prosecution has examined P.W.8 Digamber who states that he was called to the Mapusa Police Station on 1.12.99 to act as a panch. He further states that in his presence accused No.2 made a disclosure statement that he would show the blood stained clothes which were kept in his house. The accused then led the Police and the panch to the house of deceased Rajesh Singh and after opening the door, brought out a bucket containing water in which the clothes were soaking. It is difficult to believe this part of the discovery of the clothes of the accused. Police had already arrived at the scene of offence and had conducted a scene of the offence panchanama on 28.11.99. In normal search of the premises, the Police were bound to have noticed the bucket containing the clothes. The witness did not state that the bucket was hidden in such a manner that in normal search of the premises, the bucket would not have been noticed. As per the report of the Analyser at Exh.87 blood was detected on the pant and shirt claimed by accused No.2 to be belonging to him. However, the group has not been determined. According to us, no importance can be attached either to the seizure or to the fact that the clothes were blood stained.

25. As to circumstance no.(xx), in order to

establish this circumstance, prosecution has examined P.W.9 Sukanti Bhise as a panch witness. She states that accused No.1 Laxmi had disclosed that she had kept the key at Paithan in the house of one old man named Sawant/Savlo and that she would show the place. Accused No.1 took the police and the panch to the house of the said Savlo and Accused No.1 removed two keys. Accused No.1 was then brought back to her house and was told to open the door with the key. Thereafter the lock and the key were seized by the Police. P.W.9 Sukanti Bhise further states that the accused No.1 agreed to show the clothes which she was wearing at the time of the incident. Accused No.1 entered the house and brought one pink coloured saree which had blood stains. P.W.9 Sukanti Bhise has admitted in her cross-examination that before accused No.1 could open the lock the latch had been dislodged. As per the report at Exh.87 Chemical Analyser has opined that the saree was stained with human blood. The house of the accused No.1 had been earlier searched by the Police and the scene of offence panchanama had been drawn. In the background of that, it is difficult to believe that the saree came to be attached on the disclosure statement of accused No.1. The seizure of the keys at the instance of accused No.1 from the house of Prabhakar Salvi is stated by P.W.11 Prabhakar Salvi who has stated that all the accused had come and had taken

the daughter of accused No.1 and while leaving the house, accused No.1 had forgotten the keys of her house. He has further stated that on the same day at night the Police had come to his house and had taken away the keys. He has further stated that Accused No.1 had accompanied the police. The seizure of the keys at the instance of A.1 is thus, according to us, established by the prosecution.

26. As to circumstance No.(xxi). In order to establish this circumstance, prosecution has examined P.W.13 Jose Noronha who states that accused No.3 had stated before him that he would point out the pick-axe and the spade which had been kept on the roof of the toilet of the house. Accused No.3 took the police and the panch to the house of the deceased and thereafter to a toilet situated about 2 metres from the house and climbed on the roof of the toilet and took out a pick-axe and spade. Mud at adhered to the spade and as per the report of the Analyser at Exh.81, the mud on the spade was similar to the mud samples removed from the face, neck and chest of the deceased and the sample from the pit. Therefore the learned trial Court, on appreciation of the evidence, of P.W.13 has come to the conclusion that the prosecution has proved that the pick-axe and the spade has been attached at the instance of the accused No.3.

27. On perusal of the evidence, we see no reason to take a different view regarding the seizure of the pick-axe and spade at the instance of the accused.

28. We have given our anxious consideration to the rival submissions advanced before us. The evidence of P.W.30 Daya and the evidence of P.Ws.12, 19 and 20 clearly establishes that the murder of Rajesh Singh was committed by the appellants in the appeals before us. There is overwhelming evidence both direct and circumstantial which proves beyond reasonable doubt the commission of the offence by the appellants. According to us, the learned trial Court has rightly convicted the appellants for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code. We thus see no merit in the appeals and the appeals are dismissed.

29. Criminal Appeals No.13/2033, 35/2003 and 36/2003 are dismissed. Since the appellants are in jail, a copy of this judgment be sent to them.

A.M. KHANWILKAR, J.

sl. **P.V. HARDAS, J.**